



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

October 10, 1951.

Hon. J. M. Falkner, Commissioner
State Department of Banking
Austin, Texas

Opinion No. V-1311.

Re: Applicability of Senate
Bill No. 339, Acts 52nd
Legislature, 1951, to
loan and brokerage com-
panies organized under
Sections 48, 49, and 50
of Article 1302 and un-
der Article 1303b, V.C.S.

Dear Sir:

Your request for an opinion reads, in part, as fol-
lows:

"Assuming that Senate Bill No. 339 passed at the last Session of the Legislature is or will subsequently be held to be a valid law, will it be necessary for loan and brokerage companies, heretofore organized under Article 1302, 1303b, having a capital stock of \$50,000.00 as required in Senate Bill 339, to amend their charters, or can they enjoy the additional privileges granted under Senate Bill 339 without an amendment?"

Senate Bill 339, Acts 52nd Leg., 1951, ch. 472, p. 832, provides in part:

"Section 1. Corporations heretofore formed or hereafter to be formed for the purposes specified in Sections 48, 49, and 50 of Article 1302 and Article 1303b, Revised Civil Statutes of the State of Texas for 1925, and having a minimum paid-in capital of Fifty Thousand (\$50,000.00) Dollars shall, in addition to the powers conferred upon corporations by the general corporate law, have the following powers. . . ."

The additional powers granted to those corporations mentioned in the first paragraph of Section 1 are set out in

detail along with the obligations which attach to the exercise of the enumerated powers. Senate Bill 339 is a comprehensive set of regulations for loan and brokerage companies, and most parts of it have no bearing upon the question presented here; hence the statute will not be quoted.

Subsections 48, 49, and 50 of Article 1302, V.C.S., authorize corporations to be formed for the following purposes:

"48. To accumulate and lend money without banking or discounting privileges."

"49. For any one or more of the following purposes: To accumulate and lend money, purchase, sell and deal in notes, bonds and securities, but without banking and discounting privileges; to act as trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act."

"50. To subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stock, bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of foreign or domestic corporations not competing with each other in the same line of business; provided the powers and authority herein conferred shall in no way affect any provision of the anti-trust laws of this State."

Article 1303b, V.C.S., provides:

"A private corporation may be formed for any one or more of the following purposes; without banking or insurance privileges; to accumulate and loan money; to sell and deal in notes, bonds and securities; to act as Trustee under any lawful express trust committed to it by contract or will, or under appointment of any court having jurisdiction of the subject matter, and as agent for the performance of any lawful act; to subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stocks, bonds, mortgages, debentures, notes and other securities or obligations, contracts and evidence of indebtedness of foreign or domestic corporations not competing with each other in the

same line of business; to borrow money or issue debentures for carrying out any or all purposes above enumerated. Provided that the power and authority herein conferred shall in no way affect any of the provisions of the anti-trust laws of this state."

Article 1318, V.C.S., provides:

"All charters or amendments to charters, under the provisions of this Chapter, shall be subject to the power of the Legislature to alter, reform or amend the same."

A question very similar to that under consideration was involved in State v. San Antonio Public Service Co., 69 S.W.2d 38 (Comm. App. 1934). In that case a statute provided that any corporation operating a street or suburban railway could operate motor vehicles to carry passengers for hire within the city or town or within five miles thereof. The public service company operated busses under the statute, but failed to amend its charter to include this purpose. In holding that the company was authorized to operate the busses, the Court said:

"The state contends, however, that in any event appellant was required to amend its charter after the enactment of Article 6548 in 1923, so as to avail itself of its provisions. This contention is not sustained. Article 6548 is a part of the title 'Railroads' of the R.S. 1925, and is not a subdivision of article 1302, relating to the purpose clauses of corporations. It specifically authorizes an electric motor street railway corporation like appellant to operate gasoline propelled motor vehicles in connection with its street railway business. The law is settled that the powers of a corporation organized under general laws are not determined alone from its charter provisions, but are also determined from the law under which it is organized or operates. It is also settled law that it is not necessary for the charter of a corporation to contain all the powers conferred by statute; nor is it necessary to amend the charter of a corporation to include powers conferred solely by statute, unless the act itself

requires the amendment. Roaring Springs Townsite Co. v. Paducah Tel. Co., 109 Tex. 452, 212 S.W. 147; Texas Central Power Co. v. Jolly (Tex. Civ. App.) 246 S.W. 420; Kushler v. Tex. Power Corporation (Tex. Civ. App.) 9 S.W. (2d) 435; Mathis v. Fridham, 1 Tex. Civ. App. 58, 20 S.W. 1015; Wichita Falls Traction Co. v. Raley (Tex. Civ. App.) 17 S.W. (2d) 157; Thompson on Corporations (3d Ed.) § 188." (69 S.W. 2d at 45.)

We think the answer to your question is controlled by the law announced in the above case. The appellant in that case had no power to operate motorbusses until such power was conferred upon it by the act creating Article 6548, which act did not specifically require appellant to amend its charter to include the powers so conferred before it could exercise them. The Court held that appellant was not required to amend its charter before exercising the power to operate motorbusses, for such power was specifically granted by Article 6548.

This holding is in accord with the following statements of the rule set forth in Texas Jurisprudence and American Jurisprudence:

"The effect of a general statutory grant is to invest the corporation with the power as fully and effectually as if it were set out at length in its charter." (10 Tex. Jur. 863, Corporations, Sec. 234.)

"The charter of a corporation organized under a general act consists of the provisions of the existing state constitution, the particular statute under which it is formed and all other general laws which are made applicable to corporations formed thereunder and of the articles of association or incorporation filed thereunder, as the charter or certificate of incorporation granted by the Court or officer in compliance with its terms, although the provisions of such laws are not embodied in the charter, and the powers, rights, duties, and liabilities of the corporation are determined accordingly." (18 C. J.S. 422, Corporations, Sec. 43.)

Your question pertains only to corporations which have a minimum capital stock of \$50,000 and which were formed prior to September 7, 1951, the effective date of Senate Bill 339, for the purposes specified in Sections 48, 49, and 50 of Article 1302 and in Article 1303b. Senate Bill 339 specifically provides that such corporations shall have, in addition to the powers conferred upon corporations by the general corporate law, the powers therein enumerated. This bill does not specifically require any corporation to which it applies to amend its charter to include the powers so conferred before it may exercise them.

You are therefore advised that corporations formed prior to September 7, 1951, for the purposes specified in Sections 48, 49, and 50 of Article 1302 and in Article 1303b, V.C.S., and having a minimum paid-in capital of \$50,000, may exercise the additional privileges granted them by Senate Bill 339, supra, without amending their charters to include the privileges so conferred.

In answering your question, we have not considered the constitutionality of Senate Bill 339, since your question is based upon an assumption of constitutionality and does not require our consideration thereof at this time.

SUMMARY

Corporations formed prior to September 7, 1951, the effective date of Senate Bill 339, Acts 52nd Leg., R.S. 1951, ch. 472, p. 832, for the purposes specified in Sections 48, 49, and 50 of Article 1302 and in Article 1303b, V.C.S., and having a minimum paid-in capital of \$50,000, may exercise the additional privileges granted them by Senate Bill 339 without amending their charters to include the privileges so conferred. San Antonio Public Service Co. v. State, 69 S.W.2d 38 (Comm. App. 1934).

APPROVED:

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Yours very truly,

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